

July 7, 2016

**IMPORTANT NOTICE TO POTENTIAL CLASS MEMBERS**

AUTHORIZED BY JUDGE ALGENON L. MARBLEY OF THE U.S. DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO EASTERN DIVISION

TO: All current and former hourly paid workers who received non-discretionary job bonuses or similar payments throughout the United States during the period between June 13, 2016 and the present.

RE: Your right to join a collective action seeking to recover unpaid overtime compensation.

**1. PURPOSE OF THIS NOTICE**

This Notice informs you of a collective action that has been filed under the Fair Labor Standards Act (“FLSA”), advises you of your rights as a class member, and tells you how you can be included in the action. If you wish to be included in this collective action, you must sign and return the enclosed Consent Form as explained below.

**2. DESCRIPTION OF THE ACTION**

On September, 22, 2015 this collective action was filed against Defendant O-Tex Pumping, LLC (“O-Tex”) in the U.S. District Court for the Southern District of Ohio, Case No. 2:15-cv-2851. The action was filed on behalf of named Plaintiff Leonard Crescenzo and all other similarly-situated individuals.

Plaintiff Crescenzo was employed by O-Tex as an Equipment Operator, and he alleges that O-Tex violated the FLSA by failing to include non-discretionary job bonuses paid to hourly employees in the calculation of their overtime compensation. Plaintiff alleges that he and all other similarly-situated individuals are entitled to recover from O-Tex: (a) unpaid overtime compensation; (b) liquidated damages; (c) attorneys’ fees; and (d) costs under the FLSA.

O-Tex denies all liability and asserts that it paid its employees correctly. O-Tex asserts that its employees at issue in this lawsuit are and always were exempt from the FLSA because, among other things, these employees drove and/or drive commercial vehicles in transportation on public highways in interstate or foreign commerce.

The Court has not yet decided whether Plaintiff or O-Tex is correct. The right to recover these wages for any Plaintiff has not been established and is not guaranteed or certain.

**3. YOUR RIGHT TO PARTICIPATE IN THIS ACTION**

Plaintiff seeks to sue not only for himself, but also for other persons with whom he is similarly situated. Plaintiff alleges that those individuals are current and former hourly paid workers who received non-discretionary job bonuses or similar payments throughout the United States during the period between June 15, 2013 and the present. If you fit this definition, you have the right to participate in this action.

**4. HOW TO PARTICIPATE IN THIS ACTION**

To join this collective action, a “Consent Form” must be filed with the Court. You may return the Consent Form by: (a) mailing it to Plaintiff’s counsel in the self-addressed and postage-prepaid envelope included with this Notice; (c) faxing the form to Plaintiff’s counsel at 216-696-7005; or (c) scanning the form and emailing it to Plaintiff’s counsel at [consent@lazzarolawfirm.com](mailto:consent@lazzarolawfirm.com).

**The signed Consent Form must be postmarked, faxed, or scanned and emailed by August 21, 2016 [45 days after mailing].** It is important that you return the Consent Form as soon as possible because the time period for which you can seek payment for your unpaid wages will depend on when this form is filed with the Court. If you lose or misplace the enclosed Consent Form, or if you have any questions about filling out or returning the Consent Form, you may contact Plaintiff’s counsel listed in paragraph 8 of this Notice.

**5. NO RETALIATION PERMITTED**

The law prohibits O-Tex, or any of its agents or employees, to discharge you, or in any manner harass, discriminate or retaliate against you for taking part in this collective action.

## **6. EFFECT OF JOINING THIS ACTION**

If you join this collective action, you will be bound by any judgment that is rendered, whether favorable or unfavorable, and share in any recovery. You will also be bound by, and share in, any settlement that may be reached on behalf of the class.

By joining this action, you designate the named Representative Plaintiff as your agent to make decisions on your behalf concerning the litigation, the method and manner of conducting this litigation, the entering of an agreement with Plaintiff's counsel concerning fees and costs, the entering into a settlement agreement with O-Tex, and all other matters pertaining to this action. While the lawsuit is proceeding, you may be required to assist your attorney, answer written questions, sit for depositions, and/or testify in court.

**The named Plaintiff in this matter has entered into a contingency fee agreement with Plaintiff's counsel, which means that if there is no recovery, there will be no attorneys' fees or costs chargeable to you.** If there is a recovery of wages, liquidated damages, and/or attorneys' fees and costs, Plaintiff's counsel will be paid whatever attorneys' fees and costs the Court orders or approves as fair and reasonable. The fees and costs will either be subtracted from the total recovery obtained from O-Tex in the amount of thirty-three and one-third percent (33-1/3%) of your total recovery plus costs expended by Plaintiff's counsel on your behalf, or they may be paid separately by O-Tex. If there is no recovery, Plaintiff's counsel will not be paid for their work on this case.

## **7. NO LEGAL EFFECT OF NOT JOINING THIS ACTION**

If you choose not to join this action, you will not be bound by any judgment or settlement, whether favorable or unfavorable, and you will not share in any recovery. However, you are under no obligation to join. Whether to join the suit is your free choice. You will be free to file your own lawsuit with an attorney of your choosing; however, the pendency of this action will not stop the running of the statute of limitations as to any claims you may have until you file your own lawsuit.

## **8. YOUR LEGAL REPRESENTATION IF YOU JOIN**

If you participate in this action, you will be represented by:

Anthony J. Lazzaro  
Chastity L. Christy  
The Lazzaro Law Firm, LLC  
920 Rockefeller Building  
614 W. Superior Avenue  
Cleveland, Ohio 44113  
Phone: 216-696-5000  
Facsimile: 216-696-7005  
anthony@lazzarolawfirm.com  
chastity@lazzarolawfirm.com

Don J. Foty  
John A. Neuman  
Kennedy Hodges, L.L.P.  
711 W. Alabama Street  
Houston, Texas 77006  
Telephone: 713-523-0001  
Facsimile: 713-523-1116  
dfoty@kennedyhodges.com  
jneuman@kennedyhodges.com

## **9. FURTHER INFORMATION**

Further information about this Notice or the action may be obtained from Plaintiff's counsel at 216-696-5000 or 713-523-0001.

**THE COURT HAS TAKEN NO POSITION IN THIS CASE REGARDING THE MERITS OF PLAINTIFF'S CLAIMS OR OF O-TEX'S DEFENSES.**

**CONSENT FORM**

1. I consent and agree to pursue my claims for unpaid overtime and/or minimum wages through the action filed against O-Tex Pumping, L.L.C.
2. I understand that this action is brought under the Fair Labor Standards Act and/or state wage and hour laws. I hereby consent, agree and opt-in to become a plaintiff herein and be bound by any judgment by the Court or any settlement of this action.
3. I intend to pursue my claim individually, unless and until the court or parties certify this case as a collective or class action. If someone else serves as the class representative(s), then I designate the class representative(s) as my agent(s) to make decisions on my behalf concerning the litigation, the method and manner of conducting the litigation, the entering of an agreement with Plaintiff's counsel concerning fees and costs, the entering into a settlement agreement with my employer, and all other matters pertaining to this action.
4. If my consent form is stricken or if I am for any reason not allowed to participate in this case, I authorize Plaintiff's counsel to use this Consent Form to re-file my claims in a separate or related action against my employer.

Signature: \_\_\_\_\_

Date Signed: \_\_\_\_\_

Full Name: \_\_\_\_\_

**Return to:**

The Lazzaro Law Firm, LLC / 920 Rockefeller Building / 614 W. Superior Avenue / Cleveland, Ohio 44113

Fax: 216-696-7005

Email: [consent@lazzarolawfirm.com](mailto:consent@lazzarolawfirm.com)

**Must be postmarked, faxed, or scanned and emailed by August 21, 2016**

The information below will not be filed with the Court.

Start and end dates of employment: \_\_\_\_\_ to \_\_\_\_\_

Job title: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Other phone: \_\_\_\_\_

Email: \_\_\_\_\_